

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN J. CHESKIEWICZ, a minor, by his
parents and natural guardians, ALLAN J.
CHESKIEWICZ and RITA M. CHESKIEWICZ,
and ALLAN J. CHESKIEWICZ and RITA M.
CHESKIEWICZ, in their own right,

Plaintiffs,

v.

AVENTIS PASTEUR, INC., individually and as
successor in interest to CONNAUGHT
LABORATORIES, INC., PASTEUR MERIEUX
and PASTEUR MERIEUX CONNAUGHT;
GLAXOSMITHKLINE, individually and as
successor in interest to SMITHKLINE
BEECHAM CORP.; WYETH, individually and
as successor in interest to AMERICAN HOME
PRODUCTS, CORP. d/b/a WYETH, WYETH
LABORATORIES, WYETH-AYERST, WYETH-
AYERST LABORATORIES, WYETH LEDERLE,
WYETH LEDERLE VACCINES AND LEDERLE
LABORATORIES; MERCK & COMPANY, INC.;
PFIZER, INC., a subsidiary of WARNER
LAMBERT, individually and as a successor in
interest to PARKE-DAVIS, INC.; ABBOTT
LABORATORIES; ELI LILLY & COMPANY;
SIGMA-ALDRICH, INC.; AMERICAN
INTERNATIONAL CHEMICAL, INC.; and
JOHN DOES 1-10,

Defendants.

CIVIL ACTION

NO. 02-3583

COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

MAY TERM, 2002

CIVIL ACTION NO. 0952

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441 (DIVERSITY)**

**TO: CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA; CLERK OF THE COURT OF COMMON
PLEAS OF PHILADELPHIA COUNTY; and PLAINTIFFS, through their attorney
of record, CHRISTOPHER A. GOMEZ**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1441, Defendants Wyeth, Wyeth Laboratories, Wyeth-Ayerst, Wyeth-Ayerst Laboratories, Wyeth Lederle, Wyeth Lederle Vaccines and Lederle Laboratories (collectively “Wyeth”)¹, joined by all other Defendants, hereby remove the above-captioned action from the Court of Common Pleas of Philadelphia County to the United States District Court for the Eastern District of Pennsylvania.

1. On May 10, 2002, a civil action was commenced in the Court of Common Pleas of Philadelphia County, Pennsylvania, entitled Alan J. Cheskiewicz, a minor, by his parents and natural guardians, Allan J. Cheskiewicz and Rita M. Cheskiewicz, and Allan J. Cheskiewicz and Rita M. Cheskiewicz, in their own right v. Aventis Pasteur, Inc., individually and as successor in interest to Connaught Laboratories, Inc., Pasteur Merieux and Pasteur Merieux Connaught; GlaxoSmithKline, individually and as successor in interest to SmithKline Beecham Corp.; Wyeth, individually and as successor in interest to American Home Products, Corp. d/b/a Wyeth, Wyeth Laboratories, Wyeth-Ayerst, Wyeth-Ayerst Laboratories, Wyeth Lederle, Wyeth Lederle Vaccines and Lederle Laboratories; Merck & Company, Inc.; Pfizer, Inc., a subsidiary of Warner Lambert, individually and as a successor in interest to Parke-Davis, Inc.; Abbott Laboratories; Eli Lilly & Company; Sigma-Aldrich, Inc.; American International Chemical, Inc.; and John Does 1-10. Pursuant to 28 U.S.C. § 1446(a), a copy of the initial pleading is attached as Exhibit A.

2. Wyeth first received a copy of the Complaint on May 21, 2002. This Notice of Removal is therefore timely under 28 U.S.C. § 1446.

3. The action is a civil action which falls under this Court’s original jurisdiction pursuant to 28 U.S.C. § 1332 (diversity), and is one which may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1441.

¹ American Home Products Corporation changed its name to Wyeth on March 11, 2002.

4. Based on Plaintiffs' Complaint, which alleges permanent neurological and neurodevelopmental injury to a minor child, the amount in controversy in this action appears to exceed \$75,000, exclusive of interest and costs, although Defendants expressly deny liability to the Plaintiffs for any amount.

5. As alleged in the Complaint, Plaintiffs and Defendants are and were citizens of different states, except for the named Defendants GlaxoSmithKline and Aventis Pasteur, Inc., which maintain principal places of business in Pennsylvania, where Plaintiffs claim citizenship. The Pennsylvania citizenship of these corporate Defendants, who are purportedly sued as vaccine manufacturers and suppliers, should be disregarded for purposes of determining diversity jurisdiction under 28 U.S.C. § 1332 and 28 U.S.C. § 1441(b) because, under the National Childhood Vaccine Injury Act ("the Vaccine Act" or "the Act"), Plaintiffs have no remotely colorable cause of action against these Defendants. Claims for alleged vaccine-related injuries cannot be asserted against vaccine manufacturers in court until Plaintiffs have first filed a petition for compensation under the Act. 42 U.S.C. § 300aa-11(a)(2)(A). When such a petition has never been filed, the Act requires that the civil action be dismissed. *Id.* § 300aa-11(a)(2)(B). The Plaintiffs do not claim to have ever filed a petition for compensation under the Act. Because the Act requires threshold dismissal of Plaintiffs' claims against these two Defendants, they should be deemed "sham" Defendants which have been "fraudulently" joined to defeat diversity jurisdiction.

6. The citizenship of the fictitious "John Doe" Defendants named in Plaintiffs' Complaint must also be disregarded for purposes of determining removal jurisdiction pursuant to 28 U.S.C. § 1441(a).

7. Disregarding the above-described Defendants, none of the Defendants are citizens of Pennsylvania. This case is one between citizens of different states where the matter in controversy exceeds \$75,000 and this Court has jurisdiction under 28 U.S.C. § 1332.

8. Venue of this removal action is proper pursuant to 28 U.S.C. § 1442(a) because this Court is the United States District Court for the district and division embracing the place wherein the state court action was pending.

Respectfully submitted,

MICHAEL T. SCOTT
ANDREA J. REA
REED SMITH LLP
2500 One Liberty Place
Philadelphia, PA 19103
(215) 851-8100

STEPHEN L. URBANCZYK
F. LANE HEARD, III
WILLIAMS & CONNOLLY LLP
725 12th Street, N.W.
Washington, DC 20005
(202) 434-5000

COUNSEL FOR **DEFENDANTS WYETH,
WYETH LABORATORIES,
WYETH-AYERST, WYETH-AYERST
LABORATORIES, WYETH LEDERLE,
WYETH LEDERLE VACCINES AND
LEDERLE LABORATORIES**

DATED: June 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice Of Removal has been served via first-class mail, postage prepaid, this 4th day of June, 2002, upon the following counsel of record:

Christopher A. Gomez, Esquire
Miller & Associates
Two Bala Plaza
Suite 300
Bala Cynwyd, PA 19004
Counsel for Plaintiffs

Raymond Kolts, Esquire
Dean & Kolts
2020 Lakewood Drive, Suite 212
Coeur d'Alene, ID 83814
Counsel for Sigma-Aldrich

Stephanie A. Smith, Esquire
Fulbright & Jaworski, L.L.P.
600 Congress Avenue, Suite 2400
Austin, TX 78702-3271
Counsel for GlaxoSmithKline

David R. Iler, Esquire
Fulbright & Jaworski, L.L.P.
1301 McKinney, Suite 5100
Houston, TX 77010
Counsel for GlaxoSmithKline

Debbie Moeller, Esquire
Shook, Hardy & Bacon, LLP
One Kansas City Place
1200 Main Street
Kansas City, MO 64105-2118
Counsel for Eli Lilly & Company, Inc.

Nina M. Gussack, Esquire
Eugene J. Kuzinski, Esquire
Pepper Hamilton LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103
Counsel for GlaxoSmithKline

Richard Josephson, Esquire
Paul R. Elliott, Esquire
Baker Botts L.L.P.
910 Louisiana Street, Suite 2900
Houston, TX 77002-4995
Counsel for Abbott Laboratories

Timothy E. Foley, Esquire
Daniel E. Cummins, Esquire
Foley, Coggnetti, Comerford & Cimini
700 Scranton Electric Building
507 Linden Street
Scranton, PA 18503-1666
Counsel for Abbott Laboratories

Stephanie A. Scharf, Esquire
Jenner & Block LLC
One IBM Plaza
Chicago, IL 60611
Counsel for Pfizer and Parke-Davis, Inc.

James A. Willhite, Jr.
Catherine M. Reisman
Montgomery, McCracken,
Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109
Counsel for Pfizer and Parke-Davis, Inc.

Michael J. Donohue, Esquire
Kreder, Brooks, Hailstone & Ludwig
220 Penn Avenue, Suite 200
Scranton, PA 18503

Counsel for Eli Lilly & Company, Inc.

American International Chemical, Inc.
70 West Elizabeth Lane
Richboro, PA 18954

Dino S. Sangiamo, Esquire
Margaret W. Baker, Esquire
Venable Baetjer & Howard, LLP
Two Hopkins Plaza, Suite 1800
Baltimore, MD 21201-2978

Counsel for Merck & Company, Inc.

Jonathan Dryer, Esquire
Wilson, Elser, Moskowitz,
Edelman & Dicker, LLP
The Curtis Center, Suite 1130
East Independence Square West
Philadelphia, PA 19106

**Counsel for Aventis Pasteur, Inc.,
Connaught Laboratories, Inc., Pasteur
Merieux and Pasteur Merieux Connaught**

MICHAEL T. SCOTT